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OFFICE OF PETITIONS

In re Application of :
McHale, et al. :
Application No. 10/767,675 :
Filed: January 29, 2004 :
Attorney Docket No. S63.2-10813US01 :

ON PETITION

This is a decision on the papers filed on March 17, 2005, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of January 29, 2004, including Figure 13 described in the specification.

The application was submitted on January 29, 2004. However, Figure 13 described in the specification was omitted. It is Office practice to have the Office of Initial Patent Examination (OIPE) mail a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice) that states the application has been accorded a filing date, and that Figure 13 described in the specification appears to have been omitted.

An applicant is given three options when a Figure is omitted:

Option I: Should applicant contend that the omitted item was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$400.00 petition fee (37 CFR 1.17(f)) with evidence of such deposit must be filed within TWO MONTHS of the date of the Notice. The petition fee will be refunded if it is determined that the item was received by the USPTO.

Option II: Should applicant desire to supply the omitted item and accept the date that such omitted item was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to

such items), and a petition under 37 CFR 1.182 (with the \$400.00 petition fee (37 CFR 1.17(f))) requesting the later filing date must be filed within TWO MONTHS of the date of the Notice.

Option III: The failure to file a petition (and petition fee) under the above options (I) or (II) within TWO MONTHS of the date of the Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b). In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

Furthermore, In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted pages), and/or amendment of the specification to cancel all references to any omitted drawings), re-label the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any re-labeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

Accordingly, the petition is dismissed regarding the request for a filing date of January 29, 2004 including Figure 13. However, the petition is granted to the extent that the filing date shall be returned to the original filing date of January 29, 2004, but without Figure 13.

Figure 13 described in the specification, submitted February 25, 2004, will not be entered and applicant has TWO MONTHS from the mail date of this decision to select one of the above options in response to the omitted item. This period is not extendable under 37 CFR 1.136.

The application will be returned to OIPE for further processing with a filing date of January 29, 2004, including only the papers filed on that date. Figure 13, submitted February 25, 2004 ,will not be entered.

Telephone inquiries should be directed to the undersigned at (571) 272-3228.



Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office